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STATE PASS TO USDOL FOR CARLOS ROMERO AND THERESA ESQUIBEL
DEPARTMENT FOR DRL/ILCSR GABRIELLA RIGG AND WHA/PPC MIKE
PUCETTI

E.O. 12958: N/A

TAGS: [ECIN](#) [ECON](#) [ELAB](#) [ETRD](#) [EAID](#) [PE](#)

SUBJECT: PERU: REQUEST FOR UPDATED INFORMATION FOR DOL
LABOR RIGHTS REPORT

REF: ESQUIBEL E-MAIL 3/22/2007

11. Per e-mail reference, post has contacted host government officials to collect updated information for the Department of Labor's Labor Rights Report. In most cases, the Ministry of Labor and Employment Promotion (MTPE) was the most appropriate point of contact, although in some cases the data requested was not available. Responses are keyed to the e-mail reference cited above.

Inspection Reform

12. Status of the Labor Inspections Law.

The General Inspections Act, Law 28806--dated July 22, 2006--has been in force since October 16, 2006. The GOP approved the bylaws of the Inspections Act through Supreme Decree 019-2006-TR. On January 13, 2007, President Garcia and Minister of Labor Pinella met with 216 labor inspectors from the MTPE to determine how the Labor Inspectorate could be strengthened. As a result of that meeting, the government approved, through Supreme Decree 002-2007-TR--dated January 17, 2007--complementary measures to increase the authority of labor inspectors. In specific, the Supreme Decree requires businesses to allow access within 10 minutes after an inspection team arrives; transfers 10 vehicles from the Government Palace to the MTPE for the purpose of conducting inspections; establishes one hour per day of state radio broadcasting to describe labor inspection activities; and permits the public to access internet information on companies and individuals found guilty of labor rights violations.

On December 31, 2006 Supreme Decree 220-2006-EF established a higher pay scale for labor inspectors. On March 20, 2007 President Garcia swore-in 100 new inspectors at the Presidential Palace under the newly created salary provisions provided by the Decree.

13. Process of Labor Inspections

Article 12 of Law 28806 details when an inspector can expand the scope of an inspection: "By the initiative of labor inspectors, when performing inspections in compliance with an inspection order, when they learn of facts related to the

original order or when they are aware that current legal norms could be infringed."

Article 5, Paragraph 1 of Law 28806 establishes the following authority for inspectors: "To enter at any time of the day or night, without previous notification, in any workplace, facility or location subject to an inspection and remain in that place...." The only exception is for workplaces located in private homes, which are protected under the Constitution from unannounced searches.

Articles 1 and 2 of Supreme Decree 002-2007-TR obligate police and other administrative authorities to cooperate and protect labor inspectors when performing their duties and to facilitate their entry into workplaces.

These changes represent a significant expansion of authority for labor inspectors and address concerns raised by the International Labor Organization (ILO). Under previous legislation (Legislative Decree 910), labor inspectors could not change on-site the purpose of an inspection order issued by the Labor Administrative Authority, could not expand the area of inspection, and could only inspect items specifically listed on the inspection order.

14. Ratification of ILO Convention 178 (Seafarers Convention)

The National Bureau of Labor Inspections plans to inspect the living and working conditions of seafarers, in accordance with ILO Convention 178, semiannually, in June and December. Additional inspections will be conducted whenever complaints are received or when the MTPE becomes aware of conditions that may violate the convention.

15. MTPE annual budget

The annual budget for the MTPE in 2004 was 271,878,977 soles (US dollars 87,702); in 2005, 302,255,621 soles (US dollars 97,501,000); and in 2006, 272,625,234 soles (US dollars 84,513,750). The annual budget for the Labor Inspectorate for 2004 was 7,811,902 soles (US dollars 2,519,968); for 2005, 7,497,901 soles (US dollars 2,418,000); and for 2006, 8,464,880 soles (US dollars 2,678, 000).

The number of labor inspectors for 2004 was 220; for 2005, 208; and for 2006, 235. By August 2007, thirty inspectors will be assigned full-time to investigate violations of fundamental labor rights, and 30 inspectors will focus primarily on safety and health issues at work.

The MTPE expects to hire an additional 250 inspectors by the end of 2007.

The National Bureau of Inspections Work plan will be forwarded to DOL via hard copy. The plan contains a general schedule for labor inspections, with specific goals, themes, and deadlines.

15. ILO Recommendations at the International Labor Conference

A) Sanctions against acts of employer interference in trade unions

The bylaws of the General Law on Labor Inspections ban "Any actions that impede the worker's free exercise of the right to strike....Any actions that impede the free affiliation (of a worker) with a union," and any discrimination suffered by a worker "as a result of the free exercise of his union activities."

Labor inspectors have the right to sanction (through fines) employers that engage in interference in union activity; in the past, the only recourse for union workers suffering discrimination was to file an appeal with the judiciary.

B) Measures to expedite cases of anti-union discrimination

Article 29 of the Law of Labor Productivity and Competition prohibits arbitrary acts of dismissal designed to affect union membership and considers any dismissal carried out to affect union affiliation or participation "null and void." Article 168 of the Criminal Codes states that any threats or acts of violence that prevent a worker from joining a union constitute a crime to be sanctioned with a maximum penalty of a two-year jail sentence.

The National Bureau of Inspections (NBI) is developing procedures to streamline the administrative process for punishing acts of union interference. Specifically, the NBI will begin in May, 2007 training for labor inspectors and union officials on the expanded authority provided to the Labor Inspectorate by new legislation, with the goal of reducing the amount of time needed to initiate an inspection order.

C) Actions to allow public servant federations

Article 19 of Supreme Decree 0003-82-PCM states, "public worker unions, may only be formed out of public worker federations and these may only be formed out of public worker confederations. Public worker confederations may not be a part of other confederations."

This article has not been changed.

D) Sanctions for employers who fail to provide high-risk insurance

Supreme Decree 00398-TR declares fishing a hazardous activity and stipulates that employers must insure their workers.

Employers who fail to provide adequate insurance coverage must assume the total health costs of the worker and are subject to a fine. Employers who purchase but fail to use work insurance are also subject to a fine and are liable for repaying the cost of health care to the insurer.

Administration of Labor Law

17. Number of labor justice cases

The MTPE is continuing to work with the President of the Supreme Court to determine the total number of labor law cases filed at each level of the labor justice system (assistance was requested through official letter, 396-2007-MTPE/9.1). The judiciary has already indicated that the records system does not indicate the specific type of case filed.

18. Information regarding EPZs

No specific legislation exists regulating labor activities in export processing zones (EPZs). In labor matters related to exports, the hiring of workers is regulated through Law Decree 22482, which allows the temporary hiring of workers to comply with a specific export order.

Freedom of Association

19. Worker complaints filed with the MTPE

Article 8 of the Constitution recognizes the right of workers to join unions, to take part in collective bargaining, and to strike. Peru has ratified the eight fundamental ILO conventions, including Conventions 87 and 98, regarding union membership and collective bargaining.

Law 27711, the Law of the Ministry of Labor and Employment Promotion, created the National Council on Labor and Employment Promotion, designed to promote dialogue and resolve labor issues among representatives of organized labor, business, and the MTPE.

As a result of inspections made in accordance with Law 28806,

10 cases claiming acts of union interference have been submitted at the national level. None of these cases has been resolved.

¶10. Newly registered unions

In 2006, 95 labor organizations registered with the MTPE, 86 unions, eight federations, and one confederation.

¶11. Active number of registered trade unions

The total number of registered labor organizations in Peru is 403 unions, 15 federations, and four confederations.

¶12. Number of union members

After a union registers with the MTPE, Peruvian law does not require the union to notify the government of the total number of members, and the MTPE does not track this information. The MTPE is currently drafting a plan to survey labor organizations to determine total union membership in Peru.

¶13. Total number of strikes

In 2004, there were 107 declared intentions to strike; 104 were found to be illegal. In 2005, 63 out of 65 declared intentions to strike were illegal; in 2006, 65 out of 67 were illegal.

Right to organize and bargain collectively

¶14. Number of collective bargaining agreements

In 2004, 384 collective bargaining agreements were signed, three in the ports sector; in 2005, 390 collective agreements were signed, two in the ports sector; and in 2006, 451 collective agreements were signed, three in the ports sector.

¶15. MTPE assistance for negotiated collective bargaining agreements

The MTPE is continuing to compile information for the number of cases where conciliation, mediation, or arbitration was offered during negotiations for collective bargaining agreements. President Garcia and the MTPE have publicly committed themselves to supporting the use of arbitration in disputes of all kinds as an alternative to the inefficient judiciary system. Post will forward the information as soon as it is available.

Acceptable Conditions of Work

¶16. Number of labor inspections

As of March 31, 2007, there were 235 labor inspectors in Peru. In 2006, 15,320 labor inspections were conducted and 4,647 fines were levied for a total of 44,946,548 soles (US dollars 14,498,000).

¶17. Number of random inspections

In 2006, 15,320 inspections took place: 14,784 were unannounced, and 536 were requested.

¶18. Number of work-related accidents

The MTPE is continuing to compile information on the number of work-related accidents in 2006. Post will forward the information as soon as it is available.

¶19. Source information for all documents cited will provided by the MTPE and mailed via expedited delivery to Theresa Equible, USDOL.

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